

AMENDED IN ASSEMBLY MAY 4, 2011

AMENDED IN ASSEMBLY APRIL 15, 2011

AMENDED IN ASSEMBLY MARCH 17, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## ASSEMBLY BILL

**No. 1200**

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**Introduced by Assembly Member Ma**

February 18, 2011

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~~An act to amend Section 13271 of, and to add Section 13193.5 to, the Water Code, relating to water quality. An act to add Section 13383.1 to the Water Code, relating to water quality.~~

### LEGISLATIVE COUNSEL'S DIGEST

AB 1200, as amended, Ma. Water quality: discharges: sewer systems.

(1) The Porter-Cologne Water Quality Control Act generally requires a person who causes or permits any hazardous substance or sewage to be discharged in or on any waters of the state, as soon as that person has knowledge of the discharge and other requirements are met, to immediately notify the California Emergency Management Agency of the discharge in accordance with specified spill reporting requirements. ~~The act requires the California Emergency Management Agency to immediately notify the appropriate California regional water quality control board and the local health officer and director of environmental health of the discharge. Upon receiving notification of a discharge, the local health officer and the director of environmental health are required to immediately notify the public of the discharge by posting notices or other appropriate means, if necessary, to safeguard public health and safety. A person who fails to notify in accordance with these requirements, with a certain exception, is guilty of a misdemeanor that~~

is punishable by a fine of not more than \$20,000, imprisonment for not more than one year, or both. Under the act, the notification requirements do not apply to a discharge that is in compliance with waste discharge requirements or other specified provisions of law.

~~This bill would remove that exception to the notification requirements for a combined sewer and stormwater system that discharges stormwater and sewage that is untreated or subject to only primary treatment, thereby expanding the scope of a crime. By expanding the scope of a crime, and to the extent that the bill would increase the level of services imposed on local health officers, this bill would impose a state-mandated local program.~~

~~(2) The~~

*The act also requires the public or private entity having legal authority over the operation and maintenance of, or capital improvement to, a sewer collection system to submit a report to the appropriate regional board relating to a spill or overflow from a sanitary sewer system.*

*This bill would require a local public agency that operates a combined sewer and stormwater system to implement a notification plan to inform the public in the event of a discharge that occurs on or near a recreational beach. The bill would require the agency, upon the occurrence of a sewer discharge on or near a recreational beach, to post notice at the beach and conduct shoreline monitoring, in accordance with a schedule determined by the appropriate California regional water quality control board. The bill would require the agency to make reasonable efforts to enter into an agreement with a nongovernmental organization for regular sampling of receiving waters affected by discharges from the combined sewer and stormwater system. By imposing new requirements on local public agencies that operate combined sewer and stormwater systems, this bill would impose a state-mandated local program.*

*(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.*

~~This bill would require a combined sewer and stormwater system owner or operator to submit to the appropriate regional board an overflow event report, as provided.~~

~~(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.~~

~~With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 13383.1 is added to the Water Code, to  
2     read:  
3     13383.1. (a) (1) A local public agency operating a combined  
4     sewer and stormwater system shall implement a notification plan  
5     to inform the public in the event of a discharge from the system  
6     that occurs on or near a recreational beach.  
7     (2) The notification plan shall include both of the following:  
8     (A) A communication mechanism to alert persons using all  
9     receiving waters affected by sewer discharges.  
10    (B) A testing system to determine the nature and duration of  
11    conditions resulting from sewer discharges that are potentially  
12    harmful to users of receiving waters.  
13    (b) Upon a discharge from a combined sewer and stormwater  
14    system on or near a recreational beach, the public agency  
15    operating the system shall post notice at the beach in the vicinity  
16    of the discharge and shall conduct shoreline monitoring for  
17    bacteria at monitoring locations in the vicinity of the discharge,  
18    in accordance with a schedule determined by the appropriate  
19    regional board. Shoreline monitoring during and after the  
20    discharge and the posting of notice shall continue until bacteria  
21    concentrations in the receiving waters at the monitoring locations  
22    fall below maximum limits established by the appropriate regional  
23    board.

1 (c) A local public agency operating a combined sewer and  
2 stormwater system shall make reasonable efforts to enter into an  
3 agreement with a nongovernmental organization for regular  
4 sampling of receiving waters affected by discharges from the  
5 combined sewer and stormwater system.

6 SEC. 2. If the Commission on State Mandates determines that  
7 this act contains costs mandated by the state, reimbursement to  
8 local agencies and school districts for those costs shall be made  
9 pursuant to Part 7 (commencing with Section 17500) of Division  
10 4 of Title 2 of the Government Code.

11 SECTION 1. ~~Section 13193.5 is added to the Water Code, to~~  
12 ~~read:~~

13 ~~13193.5.—(a) As used in this section, the following terms have~~  
14 ~~the following meanings:~~

15 (1) ~~“Combined sewer and stormwater system owner or operator”~~  
16 ~~means the public or private entity having legal authority over the~~  
17 ~~operation and maintenance of, or capital improvements to, the~~  
18 ~~combined sewer and stormwater system.~~

19 (2) ~~“GIS” means Geographic Information System.~~

20 (b) ~~On or before January 1 of a year in which the Legislature~~  
21 ~~has appropriated sufficient funds for this purpose, the state board,~~  
22 ~~in consultation with representatives of cities, counties, cities and~~  
23 ~~counties, special districts, public interest groups, the State~~  
24 ~~Department of Public Health, and the regional boards shall develop~~  
25 ~~a uniform overflow event report form to be used for reporting of~~  
26 ~~combined sewer and stormwater system overflows as required in~~  
27 ~~subdivision (c). This event report form shall include, but not be~~  
28 ~~limited to, all of the following:~~

29 (1) ~~The cause of the overflow, including, but not limited to, the~~  
30 ~~amount of any rainfall that may have contributed to the overflow.~~

31 (2) ~~An estimate of the volume of the overflow event.~~

32 (3) ~~Location of the overflow event. Sufficient information shall~~  
33 ~~be provided to determine location for purposes of GIS mapping,~~  
34 ~~such as specific street address or the latitude and longitude of the~~  
35 ~~event.~~

36 (4) ~~Date, time, and duration of the overflow event.~~

37 (5) ~~Whether or not a beach closure occurred or may have~~  
38 ~~occurred as a result of the overflow.~~

39 (6) ~~The name, address, and telephone number of the system~~  
40 ~~owner or operator and a specific contact name.~~

1     ~~(e) Commencing on July 1 of a year in which the Legislature~~  
2     ~~has appropriated sufficient funds for this purpose, in the event of~~  
3     ~~a spill or overflow from a combined sewer and stormwater system,~~  
4     ~~the combined sewer and stormwater system owner or operator,~~  
5     ~~shall submit to the appropriate regional board, within 30 days of~~  
6     ~~the date of becoming aware of the overflow event, a report using~~  
7     ~~the form described in subdivision (b). The report shall be filed~~  
8     ~~electronically, if possible, or by fax or mail if electronic submission~~  
9     ~~is not possible.~~

10    ~~(d) Before January 1 of a year in which the Legislature has~~  
11    ~~appropriated sufficient funds for this purpose, the state board, in~~  
12    ~~consultation with representatives of cities, counties, cities and~~  
13    ~~counties, and special districts, public interest groups, the State~~  
14    ~~Department of Public Health, and regional boards, shall develop~~  
15    ~~and maintain a combined sewer and stormwater system overflow~~  
16    ~~database that, at a minimum, contains the parameters described in~~  
17    ~~subdivisions (b) and (c).~~

18    ~~(e) Commencing on July 1 of a year in which the Legislature~~  
19    ~~has appropriated sufficient funds for this purpose, each regional~~  
20    ~~board shall coordinate with combined sewer and stormwater system~~  
21    ~~owners or operators, the State Department of Public Health, and~~  
22    ~~local health officers to compile the reports submitted pursuant to~~  
23    ~~this section. Each regional board shall report that information to~~  
24    ~~the state board on a quarterly basis, to be included in the combined~~  
25    ~~sewer and stormwater system overflow database.~~

26    ~~(f) The state board shall make available to the public, by Internet~~  
27    ~~and other cost-effective means, as determined by the state board,~~  
28    ~~information that is generated pursuant to this section. In a year in~~  
29    ~~which the Legislature has appropriated sufficient funds for the~~  
30    ~~purposes described in this subdivision, the state board shall prepare~~  
31    ~~a summary report of the information collected in the combined~~  
32    ~~sewer and stormwater system overflow database, and make it~~  
33    ~~available to the general public through the Internet and other~~  
34    ~~cost-effective means, as determined by the state board. To the~~  
35    ~~extent resources and the data allow, this report shall include GIS~~  
36    ~~maps compiling coastal overflow events.~~

37    ~~(g) An overflow shall be reported pursuant to this section even~~  
38    ~~if the overflow was in compliance with waste discharge~~  
39    ~~requirements or otherwise authorized under law.~~

40    ~~SEC. 2. Section 13271 of the Water Code is amended to read:~~

1     ~~13271. (a) (1) Except as provided by subdivision (b), any~~  
2     ~~person who, without regard to intent or negligence, causes or~~  
3     ~~permits any hazardous substance or sewage to be discharged in or~~  
4     ~~on any waters of the state, or discharged or deposited where it is,~~  
5     ~~or probably will be, discharged in or on any waters of the state,~~  
6     ~~shall, as soon as (A) that person has knowledge of the discharge,~~  
7     ~~(B) notification is possible, and (C) notification can be provided~~  
8     ~~without substantially impeding cleanup or other emergency~~  
9     ~~measures, immediately notify the California Emergency~~  
10    ~~Management Agency of the discharge in accordance with the spill~~  
11    ~~reporting provision of the state toxic disaster contingency plan~~  
12    ~~adopted pursuant to Article 3.7 (commencing with Section 8574.16)~~  
13    ~~of Chapter 7 of Division 1 of Title 2 of the Government Code.~~

14    ~~(2) The California Emergency Management Agency shall~~  
15    ~~immediately notify the appropriate regional board, the local health~~  
16    ~~officer, and the director of environmental health of the discharge.~~  
17    ~~The regional board shall notify the state board as appropriate.~~

18    ~~(3) Upon receiving notification of a discharge pursuant to this~~  
19    ~~section, the local health officer and the director of environmental~~  
20    ~~health shall immediately determine whether notification of the~~  
21    ~~public is required to safeguard public health and safety. If so, the~~  
22    ~~local health officer and the director of environmental health shall~~  
23    ~~immediately notify the public of the discharge by posting notices~~  
24    ~~or other appropriate means. The notification shall describe~~  
25    ~~measures to be taken by the public to protect the public health.~~

26    ~~(b) The notification required by this section shall not apply to~~  
27    ~~a discharge in compliance with waste discharge requirements or~~  
28    ~~other provisions of this division, except for a combined sewer and~~  
29    ~~stormwater system that discharges stormwater and sewage that is~~  
30    ~~untreated or subject to only primary treatment.~~

31    ~~(c) Any person who fails to provide the notice required by this~~  
32    ~~section is guilty of a misdemeanor and shall be punished by a fine~~  
33    ~~of not more than twenty thousand dollars (\$20,000) or~~  
34    ~~imprisonment in a county jail for not more than one year, or both.~~  
35    ~~Except where a discharge to the waters of this state would have~~  
36    ~~occurred but for cleanup or emergency response by a public agency,~~  
37    ~~this subdivision shall not apply to any discharge to land that does~~  
38    ~~not result in a discharge to the waters of this state.~~

39    ~~(d) Notification received pursuant to this section or information~~  
40    ~~obtained by use of that notification shall not be used against any~~

1 person providing the notification in any criminal case, except in  
2 a prosecution for perjury or giving a false statement.

3 (e) ~~For substances listed as hazardous wastes or hazardous~~  
4 ~~material pursuant to Section 25140 of the Health and Safety Code,~~  
5 ~~the state board, in consultation with the Department of Toxic~~  
6 ~~Substances Control, shall by regulation establish reportable~~  
7 ~~quantities for purposes of this section. The regulations shall be~~  
8 ~~based on what quantities should be reported because they may~~  
9 ~~pose a risk to public health or the environment if discharged to~~  
10 ~~groundwater or surface water. Regulations need not set reportable~~  
11 ~~quantities on all listed substances at the same time. Except as~~  
12 ~~otherwise provided in subdivision (b), regulations establishing~~  
13 ~~reportable quantities shall not supersede waste discharge~~  
14 ~~requirements or water quality objectives adopted pursuant to this~~  
15 ~~division, and shall not supersede or affect in any way the list,~~  
16 ~~criteria, and guidelines for the identification of hazardous wastes~~  
17 ~~and extremely hazardous wastes adopted by the Department of~~  
18 ~~Toxic Substances Control pursuant to Chapter 6.5 (commencing~~  
19 ~~with Section 25100) of Division 20 of the Health and Safety Code.~~  
20 ~~The regulations of the Environmental Protection Agency for~~  
21 ~~reportable quantities of hazardous substances for purposes of the~~  
22 ~~federal Comprehensive Environmental Response, Compensation,~~  
23 ~~and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et~~  
24 ~~seq.) shall be in effect for purposes of the enforcement of this~~  
25 ~~section until the time that the regulations required by this~~  
26 ~~subdivision are adopted.~~

27 (f) (1) ~~The state board shall adopt regulations establishing~~  
28 ~~reportable quantities of sewage for purposes of this section. The~~  
29 ~~regulations shall be based on the quantities that should be reported~~  
30 ~~because they may pose a risk to public health or the environment~~  
31 ~~if discharged to groundwater or surface water. Except as otherwise~~  
32 ~~provided in subdivision (b), regulations establishing reportable~~  
33 ~~quantities shall not supersede waste discharge requirements or~~  
34 ~~water quality objectives adopted pursuant to this division. For~~  
35 ~~purposes of this section, “sewage” means the effluent of a~~  
36 ~~municipal wastewater treatment plant or a private utility wastewater~~  
37 ~~treatment plant, as those terms are defined in Section 13625, except~~  
38 ~~that sewage does not include recycled water, as defined in~~  
39 ~~subdivisions (c) and (d) of Section 13529.2.~~

1     ~~(2) A collection system owner or operator, as defined in~~  
2     ~~paragraph (1) of subdivision (a) of Section 13193, in addition to~~  
3     ~~the reporting requirements set forth in this section, shall submit a~~  
4     ~~report pursuant to subdivision (c) of Section 13193.~~

5     ~~(g) Except as otherwise provided in this section and Section~~  
6     ~~8589.7 of the Government Code, a notification made pursuant to~~  
7     ~~this section shall satisfy any immediate notification requirement~~  
8     ~~contained in any permit issued by a permitting agency. When~~  
9     ~~notifying the California Emergency Management Agency, the~~  
10    ~~person shall include all of the notification information required in~~  
11    ~~the permit.~~

12    ~~(h) For the purposes of this section, the reportable quantity for~~  
13    ~~perchlorate shall be 10 pounds or more by discharge to the~~  
14    ~~receiving waters, unless a more restrictive reporting standard for~~  
15    ~~a particular body of water is adopted pursuant to subdivision (c).~~

16    ~~(i) Notification under this section does not nullify a person's~~  
17    ~~responsibility to notify the local health officer or the director of~~  
18    ~~environmental health pursuant to Section 5411.5 of the Health and~~  
19    ~~Safety Code.~~

20    ~~SEC. 3. No reimbursement is required by this act pursuant to~~  
21    ~~Section 6 of Article XIII B of the California Constitution for certain~~  
22    ~~costs that may be incurred by a local agency or school district~~  
23    ~~because, in that regard, this act creates a new crime or infraction,~~  
24    ~~eliminates a crime or infraction, or changes the penalty for a crime~~  
25    ~~or infraction, within the meaning of Section 17556 of the~~  
26    ~~Government Code, or changes the definition of a crime within the~~  
27    ~~meaning of Section 6 of Article XIII B of the California~~  
28    ~~Constitution.~~

29    ~~However, if the Commission on State Mandates determines that~~  
30    ~~this act contains other costs mandated by the state, reimbursement~~  
31    ~~to local agencies and school districts for those costs shall be made~~  
32    ~~pursuant to Part 7 (commencing with Section 17500) of Division~~  
33    ~~4 of Title 2 of the Government Code.~~